Servco Automatic Machine Products Company, Inc. *and* **Local 60568, Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO, CLC.** Case 7–CA–43085

November 14, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

Upon a charge filed by the Union on May 25, 2000, the General Counsel of the National Labor Relations Board issued a complaint on July 27, 2000, against Servco Automatic Machine Products Company, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On September 25, 2000, the General Counsel filed a Motion for Summary Judgment with the Board. On September 27, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 22, 2000, notified the Respondent that unless an answer were received by August 31, 2000, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Inkster, Michigan, has been engaged in the manufacture of tubing for the automotive industry. During the calendar year ending December 31, 1999, the Respondent, in conducting its business operations, purchased and received at its Inkster, Michigan facility goods valued in excess of $50,000 directly from points outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees of the Respondent, including leaders, automatic set-up, automatic set-up trainees, automatic class A, automatic class B, automatic class C, automatic helper, leader set-up, set-up trainees, CNC class A, CNC class B, CNC class C and CNC trainees; but excluding all executive employees, professional employees, administrative employees, office-clerical employees, plant protection employees, foremen, guards and supervisors as defined in the Act.

Since about 1980 and at all material times, the Union has been the designated collective-bargaining representative of the unit and since then has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from June 20, 1994, through June 15, 1996. The latter contract was mutually extended until November 28, 1999.

At all times since 1994, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative for the unit.

The 1994–1996 collective-bargaining agreement provided, inter alia, in article X, "Vacation Pay," and in article XI, "Insurance," that the Respondent provide certain benefits on behalf of employees in the unit, including vacation benefits, hospital/medical/dental insurance benefits, and sick/personal day benefits.

Since about November 25, 1999, and continuing to date, the Respondent has unilaterally and without notice to the Union, failed and refused to provide the benefits described above.

On about December 17, 1999, the Respondent ceased business operations at its Inkster, Michigan facility and permanently laid off all its employees in the unit.

The subjects set forth above related to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent took the actions described above without notifying the Union and without affording it a meaningful opportunity to bargain over the effects of these actions on the unit.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing, and continues to fail and refuse to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing to bargain with the Union concerning the effects on the unit of the cessation of business operations at its Inkster, Michigan facility, we shall order the Respondent, on request, to bargain with the Union concerning the effects of its decision to cease operations. As a result of the Respondent's unlawful failure to bargain in good faith with the Union about the effects of its decision to close its facility, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union concerning the effects of closing its facility on its employees, and shall accompany our order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the terminated employees in a manner similar to that required in *Transmarine Navigation Corp*., 170 NLRB 389 (1968).

Thus, the Respondent shall pay its terminated employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union;[1] (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has violated Section 8(a)(5) and (1) by failing since November 25, 1999, to maintain contractually required vacation benefits, hospital/medical/dental insurance benefits, and sick/personal day benefits for its unit employees, we shall order the Respondent to make whole its unit employees for any loss of benefits suffered as a result of its failure to maintain vacation benefits, hospital/medical/dental insurance benefits, and sick/personal day benefits, and to reimburse employees for any expenses ensuing from its failure to maintain since November 25, 1999, hospital/medical/dental insurance benefits, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970) enfd. mem. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

In view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Servco Automatic Machine Products Company, Inc., Inkster, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 60568, Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO, CLC, which is the designated exclusive bargaining representative of the Respondent's employees in an appropriate unit, over the effects of its decision to close its Inkster, Michigan facility. The appropriate unit consists of:

[1] *Melody Toyota*, 325 NLRB 846 (1998).

All full-time and regular part-time employees of the Respondent, including leaders, automatic set-up, automatic set-up trainees, automatic class A, automatic class B, automatic class C, automatic helper, leader set-up, set-up trainees, CNC class A, CNC class B, CNC class C and CNC trainees; but excluding all executive employees, professional employees, administrative employees, office-clerical employees, plant protection employees, foremen, guards and supervisors as defined in the Act.

(b) Failing since November 25, 1999, to maintain contractually required vacation benefits, hospital/medical/dental insurance benefits, and sick/personal day benefits for its unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union concerning the effects on the unit employees of the termination of the Respondent's business operations at its Inkster, Michigan facility, and the termination of its unit employees and, if an understanding is reached, embody it in a signed agreement.

(b) Pay its former unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ, with interest, as set forth in the remedy portion of this decision.

(c) Make unit employees whole for its failure since November 25, 1999, to maintain vacation benefits, hospital/medical/dental insurance benefits, and sick/personal day benefits, as set forth in the remedy portion of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"[2] to the Union and to all former unit employees employed by the Respondent at any time since November 25, 1999.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 14, 2000

John C. Truesdale, Chairman

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 60568, Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO, CLC, which is the designated exclusive bargaining representative of our employees in an appropriate unit, over the effects of our decision to close our Inkster, Michigan facility. The appropriate unit consists of:

All full-time and regular part-time employees of the Employer, including leaders, automatic set-up, automatic set-up trainees, automatic class A, automatic

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

class B, automatic class C, automatic helper, leader set-up, set-up trainees, CNC class A, CNC class B, CNC class C and CNC trainees; but excluding all executive employees, professional employees, administrative employees, office-clerical employees, plant protection employees, foremen, guards and supervisors as defined in the Act.

WE WILL NOT fail to maintain contractually required vacation benefits, hospital/medical/dental insurance benefits, and sick/personal day benefits for our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union concerning the effects on our unit employees of the termination of our business operations at our Inkster, Michigan facility, and the termination of our unit employees, and reduce to writing and execute any agreement reached as a result of such bargaining.

WE WILL pay our former employees in the unit described above who were employed at the time of our closing their normal wages for the period of time set forth in the decision underlying this notice to employees, with interest.

WE WILL make our employees whole for our failure since November 25, 1999, to maintain vacation benefits, hospital/medical/dental insurance benefits, and sick/personal day benefits, with interest.

SERVCO AUTOMATIC MACHINE PRODUCTS COMPANY, INC.